UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

FRANK CORONADO, an Individual[1]

Employer

and Case 19-RC-13764

SHEET METAL WORKERS' UNION, LOCAL NO. 66,
affiliated with SHEET METAL WORKERS'
INTERNATIONAL ASSOCIATION, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record[2] in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce[3] within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

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[1] The Employer's name appears as corrected at hearing. The employer originally named on the petition was Crystal-Aire Incorporated. Coronado was served and participated fully in the hearing, including making an appearance on behalf of himself. Inasmuch as the former entity, at the time of hearing, was turning the subject operation over to Coronado, Crystal-Aire Incorporated will no longer be a party to these proceedings unless subsequent developments reveal it has failed to cease performing the unit work involved.

[2] No briefs were filed.

[3] The record reveals that Coronado, at time of hearing, was assuming two construction contracts for the fabrication and installation of HVAC on large building complexes. These are pursuant to arrangements with large, well-known, general contractors. The record shows that the minimum reimbursement for just one of these projects for wages alone was $20/hour and that the work was to require 1200 hours. Predecessor employer Crystal-Aire Incorporated stipulated to its own jurisdictional status, and that was based on virtually the identical work. Thus, it is clear that Coronado, during his first year of business, will provide services valued in excess of $50,000 to employers who meet one of the

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce[4] exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees engaged in the installation and fabrication of HVAC systems who are employed by the Employer at or out of its Sumner, Washington location; excluding all managerial employees, office clerical employees, and guards and supervisors as defined in the Act.

The Petitioner seeks to represent a unit of fabrication and installation employees, approximately five in number. When the Union first filed its representation petition, these were the employees of Crystal-Aire Incorporated ("Crystal-Aire" or "Nelson" herein). However, as revealed below, the identity of the employing entity changed, and that is the issue before me. The parties stipulated to the appropriateness of the bargaining unit. There is no history of collective bargaining among the employees involved herein.

Crystal-Aire has been in operation for approximately five years, the final two years of which have included fabrication and installation on large construction projects, in addition to service calls. Prior to two years ago it apparently was engaged in service work only. Its President is Bradley S. Nelson, Jr., (" President Nelson" herein), who testified that once he is able to sell the fabrication and installation department of his business, he will continue to provide service only, still under the name of Crystal-Aire Incorporated. The sale of this portion of the operation is due to a financial setback resulting from an earlier project for which Crystal-Aire provided contracting services and, at time of hearing, President Nelson was actively engaged in efforts to finalize the sale of the aforementioned department, to Coronado. Frank Coronado ("Coronado" herein) had served as project coordinator and statutory supervisor of the Employer's overall operations for over one year prior to the filing of the petition. It is Coronado who is purchasing the installation and fabrication equipment and inventory. A written purchase agreement had not yet been executed at time of hearing, as Coronado still was awaiting word from a specific financial institution concerning a loan for that purpose. Approximately three weeks prior to the hearing, President Nelson and Coronado held a meeting of the employees and announced to them the above efforts.[5] The new entity had no official name at time of

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Board's jurisdictional standards, other than an indirect standard. Accordingly, I find the Board has jurisdiction over the Employer herein.

[4] At different places in the record, both Crystal Air Incorporated and Coronado declined to recognize the Petitioner as the exclusive collective bargaining representative of the subject employees.

[5] Nelson and Coronado testified that the employees were also notified that Coronado would not necessarily hire all the current employees but, rather, would interview and hire selectively, and that inasmuch as it would take a while for the business to become fully operational, he would not need the full complement immediately. An employee testified that he did not recall a statement concerning having to undergo an interview, but that he did recall a statement regarding a temporary layoff. In fact, at time of hearing, the entire complement of employees had performed some work for Coronado, and were told they were to return to work after a brief hiatus caused by the general contractor.

hearing, and Coronado apparently had no company in existence on paper, though employees were given the contemplated name of "Westside Heating."

There were four on-going projects at time of hearing, and President Nelson testified without contradiction that he is seeking no more fabrication and installation contracts. The first two of the contracts were virtually completed: Arden Courts Assisted Living ("Arden"), which needed approximately 20-30 more hours' work; Stonebrook Suites in Kent ("Kent"), which would be completed after approximately 80 more hours. Additionally, two projects were of substantially longer duration: Stonebrook Suites in Mukilteo ("Mukilteo") and the Reeves Building ("Reeves"). The bulk of the work on the last two projects had yet to be done and required 780 to 1200 hours each. Both Mukilteo and Reeves were bid jobs with a general contractor but the contracts had yet to be signed by the Crystal-Aire, Nelson or Coronado. Both Nelson and Coronado agreed at hearing that the industry practice was that in such a situation, the work would "go with" the individual who had obtained it (in this case, Coronado) should the original bidding contractor, Crystal-Aire, be unable to fulfill such an unexecuted contract. Thus, upon successfully obtaining the financial backing for his new venture, Coronado, in a legal status yet to be selected, would officially inherit the work being performed by the unit employees. Coronado was quite adamant that one way or another he would formally obtain the Reeves and Mukilteo contracts.

The work to be performed and being performed by the employees was the same as that performed earlier for Crystal-Aire. At time of hearing, President Nelson and Coronado were operating under a "handshake deal" which had already provided for the latter's taking over Nelson's Houston Road, Sumner, shop site, pay arrangements for the employees by Coronado and a fall-back arrangement for employee pay. (In the event of Coronado's lack of success in obtaining necessary financial backing, Nelson would cover that payroll and deduct same from the agreed-upon sales price.) Thus, President Nelson had already moved the Crystal-Aire operation from Houston Road and had established a separate office at a different location. The sole employee engaged exclusively in service work, Brian McGann, remains the only employee of Nelson's scaled-back operation and is not involved in this proceeding. Coronado had since March 5, 1999, performed work on all four remaining projects with the former President Nelson employees, acting as their employer. Coronado was using Nelson's inventory; he was no longer getting wages from Nelson.

It is obvious from the foregoing that Crystal-Aire no longer is the employer of the employees and has abandoned all further efforts to engage in fabrication and installation of HVAC. That work has been assumed by Frank Coronado, first in an informal manner or "handshake deal" and, ultimately upon proper financing, there will be a formal contractual assumption. One way or another, Coronado intends to function as the employer, taking over all Nelson contracts. The employees involved continued under the "handshake deal" to perform the subject work and, at time of hearing, had worked on all four projects. They had undergone a brief layoff because Coronado was ahead of other subcontractors on the site, but they were told they would resume work in a few days. Their terms and conditions of employment had not changed. The shop site on Houston Road was the same. Their overall supervisor, Coronado, was the same. Virtually nothing about their employment had been altered with the exception of the substitution of Coronado for Crystal-Aire. Under the circumstances, I find it appropriate to

direct an election among the employees of this, Crystal-Aire's successor employer, Frank Coronado, an Individual.[6]

There are approximately five employees in the unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by SHEET METAL WORKERS' UNION, LOCAL NO. 66, affiliated with SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, AFL-CIO.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision 4 copies of an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters must be filed with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Seattle Regional Office, 2948 Jackson Federal Building, 915 Second Avenue, Seattle, Washington, on or before April 9, 1999. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

NOTICE POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club*

[6] While it is still conceivable that the Nelson/Coronado handshake deal will fall apart, this is only speculative. At present, both understand and believe the agreement will become permanent in some way, and are operating accordingly. Nothing is "on hold."

Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by April 16, 1999.

DATED at Seattle, Washington, this 2nd day of April, 1999.

/s/ PAUL EGGERT

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Paul Eggert, Regional Director
National Labor Relations Board, Region 19
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Seattle, Washington 98174

177-1667-5000